

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES**

In Re: The Revocation of the License of  
Joe and Delores Arrington  
3319 Russell Avenue North  
Minneapolis, Minnesota 55412  
To Provide Child Foster Care under  
Minnesota Rules, parts 9545.5105 to  
9545.0445.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 1:00 p.m. on Monday, March 1, 1999, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, C-2000 Government Center, Minneapolis, Minnesota 55487, represented the Department and the County at the hearing. Joe and Delores Arrington did not appear at the hearing, nor did anyone appear on their behalf. The record closed on March 1, 1999, when the hearing ended.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after reviewing the hearing record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minnesota Law,<sup>[1]</sup> the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time, the Commissioner must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument. Parties should contact the office of Michael O'Keefe, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file objections or present argument.

## **STATEMENT OF THE ISSUES**

Whether Mr. and Mrs. Arrington violated Minnesota's child foster care statutes and rules and whether the Commissioner of Human Services should therefore affirm the Department's revocation of their license to provide child foster care.

Based upon the record in this matter, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. On November 19, 1997, the Department's attorney began this contested case proceeding by serving Mr. and Mrs. Arrington with the Notice of and Order for Hearing (Notice of Hearing) by certified U. S. Mail directed to the address that the Arringtons had provided to the Department.

2. The Notice of Hearing scheduled a hearing in this contested case proceeding beginning at 9:30 a.m. on Thursday, February 26, 1998.

3. The Administrative Law Judge (ALJ) subsequently rescheduled the hearing for Wednesday, May 27, 1998. After hearing the opening statements of the parties, it became clear to the ALJ that the sole basis for the Arringtons' appeal was a challenge to the County's earlier finding that they had committed maltreatment of a child. Because of recent changes in the law, the ALJ stayed proceedings temporarily and requested the parties to submit memoranda describing their respective positions on what the appropriate forum should be for the Arringtons to challenge the County's maltreatment finding.

4. After the ALJ entered the temporary stay, the Arringtons engaged John M. Gearin, Attorney at Law, 386 North Wabash, Suite 600, St. Paul, Minnesota, 55102-1308, to represent them in this matter. Counsel for both parties subsequently advised the ALJ of their consensus that the ALJ lacked the authority in this revocation proceeding to overturn the County's maltreatment finding. Rather, the appropriate way for the Arringtons to challenge that finding was by requesting a contested case proceeding under the Minnesota Data Practices Act<sup>[2]</sup> to challenge the accuracy and completeness of that finding.<sup>[3]</sup> On July 6, 1998, the ALJ therefore entered an order staying further proceedings indefinitely to allow Mr. and Mrs. Arrington to a separate administrative appeal of the maltreatment finding.

5. On July 24, 1998, the Arringtons initiated an administrative appeal to Hennepin County challenging the accuracy and completeness of the maltreatment finding.<sup>[4]</sup> On September 14, 1998, Hennepin County denied the appeal and notified the Arringtons that it was adhering to its original finding of maltreatment (neglect). The denial letter also notified the Arringtons they had the right to appeal the County's decision to the Minnesota Department of Administration within 60 days<sup>[5]</sup>. The County reiterated these rights in a letter to the Arringtons' attorney dated September 23, 1998.<sup>[6]</sup>

6. The Arringtons failed to appeal the County's decision within the time specified by law.<sup>[7]</sup> And on January 25, 1999, the County requested the ALJ to set a date on which to resume the hearing on the merits of the decision to revoke the Arringtons' child foster care license.<sup>[8]</sup>

7. On January 27, 1999, the ALJ served an Order on the parties setting this matter for hearing at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota, on Monday, March 1, 1999, at 1:00 p.m. That Order also contained the following provision:

That the parties are advised that under the rules of the Office of Administrative Hearings failure to appear at that hearing without the prior consent of the Administrative Law Judge shall constitute a default, and the Administrative Law Judge may take the allegations of or the issues set out in the Notice of and Order for Hearing issued on November 19, 1997, as true or deemed proved without further evidence.

8. The Arringtons did not appear at the March 1, 1999, hearing, nor did they make a prehearing request to the ALJ to be excused from appearing at that hearing or to have the hearing rescheduled for a later date.

9. Because of the Arringtons' violations of this Office's rules — that is failing to appear at the hearing — the facts alleged in the Notice of Hearing are taken as true, and the ALJ incorporates those facts into these Findings by reference.

10. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. Minnesota law<sup>[9]</sup> gives the Administrative Law Judge and the Commissioner of Human Services authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, and orders.

2. The Department has complied with all of Minnesota law's substantive and procedural requirements.

3. Mr. and Mrs. Arrington were given proper and timely notice of the hearing that was scheduled for March 1, 1999.

4. Under the Office of Administrative Hearings' rules,<sup>[10]</sup> Mr. and Mrs. Arrington are in default because they failed to appear at the scheduled hearing without being excused by the ALJ.

5. Under those rules, when a party defaults, an administrative law judge may take the facts alleged in the Notice of Hearing as true and no longer in dispute.

6. Based upon the facts alleged in the Notice of and Order for Hearing, which the Administrative Law Judge has taken as true, Mr. and Mrs. Arrington have violated Minnesota's child foster care licensing statutes and rules.<sup>[11]</sup> The law therefore allows the Commissioner to revoke their child foster care license.

8. The Administrative Law Judge adopts as Conclusions any Findings which are more appropriately described as Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

#### **RECOMMENDATION**

The Administrative Law Judge recommends that the Commissioner AFFIRM the Department's October 14, 1997, decision to revoke the Arringtons' child foster care license.

Dated this 2nd day of March 1999.

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BRUCE H. JOHNSON  
Administrative Law Judge

### **NOTICE**

Under Minnesota law,<sup>[12]</sup> the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

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<sup>[1]</sup> Minn. Stat. § 14.61 (1998). (Unless otherwise specified, all references to Minnesota Statutes are to the 1998 edition.)

<sup>[2]</sup> Minnesota Statutes, Section 13.04, subdivision 4 (1996).

<sup>[3]</sup> See letter of Assistant Hennepin County Attorney Duane A. Bartz dated June 23, 1998, and letter of John M. Gearin, Attorney at Law, dated July 1, 1998.

<sup>[4]</sup> Exhibit 1.

<sup>[5]</sup> Exhibit 2.

<sup>[6]</sup> *Id.*

<sup>[7]</sup> See Minnesota Rules, part 1205.1600, subpart 2 (1997). (Unless otherwise specified, all references to Minnesota Rules are to the 1997 edition.)

<sup>[8]</sup> Letter from Assistant Hennepin County Attorney Vicki Vial-Taylor dated January 25, 1999.

<sup>[9]</sup> Minnesota Statutes, section 14.50 and sections 245A.01 to 245A.16.

<sup>[10]</sup> Minnesota Rules, part 1400.6000.

<sup>[11]</sup> Minnesota Rules, part 9545.0090.

<sup>[12]</sup> Minnesota Statutes, section 14.62, subdivision 1.